

1. Donald Vanderwoude owns and operates American Mobile Home Service, a company that sets up and maintains mobile homes. The company is a sole proprietorship.
2. The parties stipulated that Mr. Vanderwoude injured himself at work and that he is temporarily and totally disabled.
3. Other than Mr. Vanderwoude, American Mobile Home Service has no full-time employees. But Mr. Vanderwoude occasionally hires others to work for him and he pays them as "contract" laborers.

4. When contracting with Mr. Vanderwoude, other companies sometimes require proof of workers compensation insurance coverage. In either late December 1994 or early January 1995, Mr. Vanderwoude first purchased workers compensation insurance for his business operations.

5. A certificate of insurance issued by Mr. Vanderwoude's insurance broker dated March 17, 1998, and introduced at the preliminary hearing as claimant's exhibit 2, identifies American Mobile Home Service and Don Vanderwoude as the insureds and indicates that the company's "proprietor/partners/executive officers" were included in the coverage under a Travelers workers compensation insurance policy for the period from January 1, 1998, until January 1, 1999.

6. A second certificate of insurance dated March 15, 1999, and introduced at the hearing as claimant's exhibit 1, also names American Mobile Home Service and Don Vanderwoude as the insureds and also indicates that the company's "proprietor/partners/executive officers" were included in workers compensation insurance coverage purchased from Travelers. That certificate shows a term of coverage from January 1, 1999, to January 1, 2000.

7. In December 1994, Mr. Vanderwoude first contacted the Marsden Gliem Feeney LC insurance agency to purchase workers compensation insurance coverage. In the document entitled Workers Compensation Insurance Plan, which the insurance agency prepared and which Mr. Vanderwoude signed, there is a notation that Mr. Vanderwoude would be excluded from the policy coverage. Additionally, the document shows an amount for Mr. Vanderwoude's estimated income and includes a statement that he uses only contract labor, if needed, instead of hiring employees.

8. Mr. Vanderwoude testified that he believed that he had obtained workers compensation insurance coverage upon himself.

#### **CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Appeals Board finds:

1. This is an appeal from a preliminary hearing Order. The Board's jurisdiction to review preliminary hearing findings is limited to the following issues, which are deemed jurisdictional.<sup>1</sup>

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide both timely notice and written claim of the accidental injury?
- (4) Is there any defense that goes to the compensability of the claim?

---

<sup>1</sup> K.S.A. 1998 Supp. 44-534a.

Additionally, the Appeals Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction or authority.<sup>2</sup>

2. Self-employed individuals may bring themselves within the provisions of the Workers Compensation Act by procuring insurance coverage.<sup>3</sup> Because the existence or nonexistence of insurance coverage determines whether Mr. Vanderwoude's accident is compensable under the Act, the Appeals Board has jurisdiction to review the insurance coverage issue in an appeal from a preliminary hearing order.<sup>4</sup>

3. Considering Mr. Vanderwoude's testimony and the insurance certificates, which are the most current insurance documents in the record, the Board finds that Mr. Vanderwoude had insurance coverage on himself on the date of accident. Therefore, the Board affirms Judge Avery's preliminary hearing finding that the April 1, 1999 accident is compensable.

4. As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>5</sup>

**WHEREFORE**, the Appeals Board affirms the preliminary hearing Order dated June 10, 1999, entered by Judge Brad E. Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1999.

---

BOARD MEMBER

c: Michael R. Wallace, Shawnee Mission, KS  
Gregory D. Worth, Lenexa, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director

---

<sup>2</sup> K.S.A. 1998 Supp. 44-551.

<sup>3</sup> K.S.A. 44-542a.

<sup>4</sup> See Sanchez v. Habaneros Mexican Restaurant, Appeals Board Docket #223,835.

<sup>5</sup> K.S.A. 1998 Supp. 44-534a(a)(2).